

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

ORIGINAL
75-7532

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In the Matter of
AIRSPUR CORPORATION, a/k/a
AIRSPUR, NEW YORK, Bankrupt
-----X

B
Docket No. 75-7532
P/S

BRIEF FOR APPELLEE

K. R. CRAVENS CORPORATION

LOVEJOY, WASSON, LUNDGREN & ASHTON
Professional Corporation
250 Park Avenue
New York, New York 10017
212-697-4100

Of Counsel:

Edwin E. McAmis
Geoffrey A. Bass

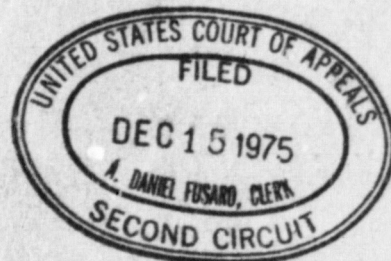


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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

WHETHER THE DISTRICT COURT CORRECTLY DECIDED THAT THE BANKRUPTCY COURT SHOULD IN THE EXERCISE OF ITS DISCRETION HAVE DISMISSED THE TRUSTEE'S COUNTERCLAIM AGAINST APPELLEE BECAUSE THE TRUSTEE RAISED IDENTICAL CLAIMS IN A PLENARY ACTION AGAINST EIGHTEEN DEFENDANTS IN THE NEW YORK STATE SUPREME COURT.

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BRIEF FOR APPELLEE

K. R. CRAVENS CORPORATION

Appellee K. R. Cravens Corporation ("KRC") submits this brief relating solely to its special position on the appeal of the Trustee in Bankruptcy (the "Trustee") of Airspur Corporation ("Airspur") from an order of the Honorable Charles H. Tenney of the United States District Court for the Southern District of New York, dated August 6, 1975.

STATEMENT OF THE CASE

The Order of the District Court Judge reversed an order dated August 29, 1974 of the Honorable Roy Babitt, Bankruptcy Judge, which denied KRC's motion to dismiss the "Objection to Claim" (the "counterclaim") of the Trustee for lack of jurisdiction over the subject matter, and which also denied the motions of appellees Mercantile Commerce Company ("Mercantile"), Ohio Real Property, Inc. ("Ohio"), and Bankers Trust Company ("Bankers Trust").

In his memorandum opinion the District Court Judge found that the Bankruptcy Court could not assert summary jurisdiction over the Trustee's counterclaims against Mercantile, Ohio and Bankers Trust. The District Court found that the Bankruptcy Court did have summary jurisdiction over the counterclaim asserted against KRC, but that the Bankruptcy Judge in his discretion should have declined jurisdiction over the counterclaim against KRC because of the pendency of another action begun by the Trustee in the Supreme Court of the State of New York (the "State Court Action") asserting claims identical to those stated in his counterclaim against KRC filed in the Bankruptcy Court. Appellees Mercantile, Ohio and Bankers Trust are all named as parties to the State Court Action. The District Court found that the Bankruptcy Judge could have stayed resolution of KRC's claim pending resolution of the State Court Action.

KRC joins in the discussion of the relevant law contained in the joint brief submitted by appellees Mercantile, Commerce and Bankers Trust on the issue of the proper exercise of the Bankruptcy Judge's discretion in declining jurisdiction over the counterclaims.

KRC has not appealed from the District Court's finding that the counterclaim against KRC is within the summary jurisdiction of the Bankruptcy Court.

STATEMENT OF RELEVANT FACTS

On June 30, 1970 Airspur filed its petition in the Bankruptcy Court commencing proceedings under Chapter XI of the Bankruptcy Act; Airspur was adjudicated a bankrupt on August 31, 1970.

On March 3, 1971, KRC filed a proof of claim for \$370,768.84. The claim of KRC arose out of the sale of three jet airplanes by International Jetstream Corporation ("IJC") to Airspur on or about February 24, 1970. The airplanes were sold for \$445,000 each, plus \$20,000 for optional equipment, or a total purchase price of \$1,395,000, of which \$1,024,231.16 was paid.

On December 23, 1969, January 8, 1970, and January 25, 1970 the three jets were delivered to Northwest Industries, Ltd. in Alberta, Canada for modifications, from where they were to be sent to California.

The unpaid balance of the purchase price, \$370,768.84, was assigned to KRC on February 26, 1970 by IJC. This amount remains unpaid.

In August 1972 the Trustee in Bankruptcy filed with the Bankruptcy Court an "Objection to Claim" against KRC and its assignor, IJC, alleging that they were engaged with others in a purported mismanagement of their corporation and Airspur,

part of which alleged plan included the payment for the three jets by Airspur to IJC. The Trustee claimed the amount of the payment, \$1,068,500, as damages owing to the estate. The Trustee made similar charges against Ohio, Chemical Bank New York Trust Company, and Bankers Trust in responding to their claims.

During August, 1972 the Trustee also instituted the State Court Action against eighteen individuals. The Trustee's complaint in the State Court Action alleges identical claims of mismanagement as those raised in his counterclaim filed in the Bankruptcy Court.

ARGUMENT

THE DISTRICT COURT CORRECTLY
DECIDED THAT THE BANKRUPTCY
COURT SHOULD HAVE DECLINED
JURISDICTION OVER THE
TRUSTEE'S COUNTERCLAIMS

The District Court Judge found that the Bankruptcy Judge should have declined jurisdiction over the counterclaims against KRC, because

"The issues raised by the counterclaim asserted against Cravens [KRC] which revolve around the "sale" of three jets to Airspur by Cravens' assignee, Jetstream [IJC], are also integral to the claims set forth in the state complaint filed by the Trustee. Determination of all of the issues presented in the plenary action will necessarily require their resolution." (326a)

In his opinion, the Bankruptcy Judge founded his acceptance of jurisdiction on the ground that

"any other result would permit multiplicity of suits at additional expense to the creditors, and permit delay of administration"
(Opinion of the Bankruptcy Judge [315a]).

This multiplicity of suits was brought about by the Trustee when he instigated the action in New York County. The Trustee's claim in the State Court Action of fiduciary mismanagement raises ambiguous factual and difficult legal issues which are identical to those sought to be raised as a counterclaim against KRC in the Bankruptcy Court. These issues will require extensive pre-trial discovery. The claim will be litigated by the Trustee in the State Court Action against eighteen defendants. In these circumstances, as the District Court found, the aim of efficient and speedy administration of estates would be ill-served by further complicating a multi-party State Court litigation initiated by the Trustee by retaining jurisdiction in the Bankruptcy Court over an identical claim. See In re Wonderbowl 456 F.2d 954 (9th Cir 1974), Wikle v. Country Life Ins. Co., 423 F.2d 151, 154 (9th Cir 1970) and In re Professional Health Services, Inc. (S.D.N.Y. 70 B 127, August 9, 1972) discussed in the joint brief submitted by appellees Mercantile, Ohio and Bankers Trust.



To fulfill the demands of the efficient administration of justice the Trustee should be left to pursue the action he commenced in the New York State Supreme Court.

CONCLUSION

For the reasons stated above, the decision of the District Court Judge should be affirmed.

Respectfully submitted,

LOVEJOY, WASSON, LUNDGREN & ASHTON,
Professional Corporation
Attorneys for Appellees
K. R. CRAVENS CORPORATION
250 Park Avenue
New York, N.Y. 10017
(212) 697-4100

Of Counsel:

Edwin E. McAmis
Geoffrey A. Bass

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Firm Alex J. Rosen

By Gene Loung